

Essays on law and economics of state aid

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Statements (“stellingen”)

1. On the whole, the Community system of state aid control has been effective in restraining the propensity of member states to subsidise their firms for strategic or political reasons. However, too much aid is still allowed almost automatically. Despite the aims of the Lisbon process to reduce state aid, member states now have new possibilities for granting generous amounts of aid.
2. Although the refined economic approach and the related balancing test are steps in the right direction (i.e. more efficient allocation of resources), in reality they do not balance out the positive against the negative effects of state aid.
3. The Commission has created new ambiguities in its decisional practice by referring to “residual” advantage, despite the fact that in the cases concerned member states had used competitive selection procedures. The Commission appears to be at odds with the Courts which have accepted that contracts awarded on the basis of competitive bidding do not confer a gratuitous advantage and therefore do not fall within the scope of Article 87(1).
4. The market economic investor principle is meaningless without a criterion for monitoring the ex post behaviour of public authorities. Governments are undemanding shareholders and may tolerate poor corporate management.
5. Despite their stated aims, the rescue and restructuring aid guidelines and Commission practice do not actually require member states to demonstrate that the aid they grant to rescue or restructure companies in difficulty in fact prevents social disruption or excessive market concentration.
6. There is no effective Community penalty for member states that repeatedly grant aid without first notifying it to the European Commission.
7. The concept of “intent to harm” competitors is meaningless in cases concerning sales below cost, which are considered under Article 82.

8. Article 86(2) allows inefficient companies to remain in the market. This does not seem to be consistent with the conditions of Article 86(2) itself which requires, inter alia, that trade is not distorted to an extent contrary to the Community interest.
9. The requirement for proportionality that must be satisfied by public measures that restrict the provision of services for “overriding reasons relating to public interest” in effect means that member states should mutually recognise equivalent quality standards.
10. The Treaty of Lisbon is of little consequence to Community policies. Therefore, non ratification of the Treaty will not harm the Community’s ability to act in existing policy fields.
11. The popularity of the European Union will increase when an EU football team is created to take on teams from other continents. In global soccer competitions, the EU is bound to be a winner.